

110TH CONGRESS  
2D SESSION

# S. 3626

To amend the Internal Revenue Code of 1986 to improve access to health care through expanded health savings accounts, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26 (legislative day, SEPTEMBER 17), 2008

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to improve access to health care through expanded health savings accounts, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE, ETC.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Family and Retirement Health Investment Act of 2008”.

6       (b) AMENDMENT OF 1986 CODE.—Except as other-  
7       wise expressly provided, whenever in this Act an amend-  
8       ment or repeal is expressed in terms of an amendment  
9       to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-  
 2 sion of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—The table of contents is  
 4 as follows:

Sec. 1. Short title, etc.

Sec. 2. Allow both spouses to make catch-up contributions to the same HSA  
 account.

Sec. 3. Provisions relating to Medicare.

Sec. 4. Individuals eligible for veterans benefits for a service-connected dis-  
 ability.

Sec. 5. Individuals eligible for Indian Health Service assistance.

Sec. 6. FSA and HRA termination to fund HSAS.

Sec. 7. Purchase of health insurance from HSA account.

Sec. 8. Special rule for certain medical expenses incurred before establishment  
 of account.

Sec. 9. Preventive care prescription drug clarification.

Sec. 10. Certain exercise equipment and physical fitness programs treated as  
 medical care.

Sec. 11. Certain nutritional and dietary supplements to be treated as medical  
 care.

Sec. 12. Certain physician fees to be treated as medical care.

5 **SEC. 2. ALLOW BOTH SPOUSES TO MAKE CATCH-UP CON-**  
 6 **TRIBUTIONS TO THE SAME HSA ACCOUNT.**

7 (a) IN GENERAL.—Paragraph (3) of section 223(b)  
 8 is amended by adding at the end the following new sub-  
 9 paragraph:

10 “(C) SPECIAL RULE WHERE BOTH  
 11 SPOUSES ARE ELIGIBLE INDIVIDUALS WITH 1  
 12 ACCOUNT.—If—

13 “(i) an individual and the individual’s  
 14 spouse have both attained age 55 before  
 15 the close of the taxable year, and

1 “(ii) the spouse is not an account ben-  
 2 eficiary of a health savings account as of  
 3 the close of such year,  
 4 the additional contribution amount shall be 200  
 5 percent of the amount otherwise determined  
 6 under subparagraph (B).”.

7 (b) EFFECTIVE DATE.—The amendment made by  
 8 this section shall apply to taxable years beginning after  
 9 the date of the enactment of this Act.

10 **SEC. 3. PROVISIONS RELATING TO MEDICARE.**

11 (a) INDIVIDUALS OVER AGE 65 ONLY ENROLLED IN  
 12 MEDICARE PART A.—Section 223(b)(7) (relating to con-  
 13 tribution limitation on Medicare eligible individuals) is  
 14 amended by adding at the end the following new sentence:  
 15 “This paragraph shall not apply to any individual during  
 16 any period the individual’s only entitlement to such bene-  
 17 fits is an entitlement to hospital insurance benefits under  
 18 part A of title XVIII of such Act pursuant to an enroll-  
 19 ment for such hospital insurance benefits under section  
 20 226(a)(1) of such Act.”.

21 (b) MEDICARE BENEFICIARIES PARTICIPATING IN  
 22 MEDICARE ADVANTAGE MSA MAY CONTRIBUTE THEIR  
 23 OWN MONEY TO THEIR MSA.—Subsection (b) of section  
 24 138 is amended by striking paragraph (2) and by redesign-

1 nating paragraphs (3) and (4) as paragraphs (2) and (3),  
 2 respectively.

3 (c) EFFECTIVE DATE.—The amendments made by  
 4 this section shall apply to taxable years beginning after  
 5 the date of the enactment of this Act.

6 **SEC. 4. INDIVIDUALS ELIGIBLE FOR VETERANS BENEFITS**  
 7 **FOR A SERVICE-CONNECTED DISABILITY.**

8 (a) IN GENERAL.—Section 223(c)(1) (defining eligi-  
 9 ble individual) is amended by adding at the end the fol-  
 10 lowing new subparagraph:

11 “(C) SPECIAL RULE FOR INDIVIDUALS ELI-  
 12 GIBLE FOR CERTAIN VETERANS BENEFITS.—  
 13 For purposes of subparagraph (A)(ii), an indi-  
 14 vidual shall not be treated as covered under a  
 15 health plan described in such subparagraph  
 16 merely because the individual receives periodic  
 17 hospital care or medical services for a service-  
 18 connected disability under any law administered  
 19 by the Secretary of Veterans Affairs but only if  
 20 the individual is not eligible to receive such care  
 21 or services for any condition other than a serv-  
 22 ice-connected disability.”.

23 (b) EFFECTIVE DATE.—The amendment made by  
 24 this section shall apply to taxable years beginning after  
 25 the date of the enactment of this Act.

1 **SEC. 5. INDIVIDUALS ELIGIBLE FOR INDIAN HEALTH SERV-**  
 2 **ICE ASSISTANCE.**

3 (a) IN GENERAL.—Section 223(c)(1), as amended by  
 4 section 4, is amended by adding at the end the following  
 5 new subparagraph:

6 “(D) SPECIAL RULE FOR INDIVIDUALS EL-  
 7 IGIBLE FOR ASSISTANCE UNDER INDIAN  
 8 HEALTH SERVICE PROGRAMS.—For purposes of  
 9 subparagraph (A)(ii), an individual shall not be  
 10 treated as covered under a health plan de-  
 11 scribed in such subparagraph merely because  
 12 the individual receives hospital care or medical  
 13 services under a medical care program of the  
 14 Indian Health Service or of a tribal organiza-  
 15 tion.”.

16 (b) EFFECTIVE DATE.—The amendment made by  
 17 this section shall apply to taxable years beginning after  
 18 the date of the enactment of this Act.

19 **SEC. 6. FSA AND HRA TERMINATION TO FUND HSAS.**

20 (a) ELIGIBLE INDIVIDUALS INCLUDE FSA AND HRA  
 21 PARTICIPANTS.—Section 223(c)(1)(B) is amended—

22 (1) by striking “and” at the end of clause (ii),

23 (2) by striking the period at the end of clause

24 (iii) and inserting “, and”, and

25 (3) by inserting after clause (iii) the following  
 26 new clause:

“(iv) coverage under a health flexible spending arrangement or a health reimbursement arrangement in the plan year a qualified HSA distribution as described in section 106(e) is made on behalf of the individual if after the qualified HSA distribution is made and for the remaining duration of the plan year, the coverage provided under the health flexible spending arrangement or health reimbursement arrangement is converted to—

“(I) coverage that does not pay or reimburse any medical expense incurred before the minimum annual deductible under section 223(c)(2)(A)(i) (prorated for the period occurring after the qualified HSA distribution is made) is satisfied,

“(II) coverage that, after the qualified HSA distribution is made, does not pay or reimburse any medical expense incurred after the qualified HSA distribution is made other than preventive care as defined in section 223(c)(2)(3),

1 “(III) coverage that, after the  
2 qualified HSA distribution is made,  
3 pays or reimburses benefits for cov-  
4 erage described in section  
5 223(c)(1)(B)(ii) (but not through in-  
6 surance or for long-term care serv-  
7 ices),

8 “(IV) coverage that, after the  
9 qualified HSA distribution is made,  
10 pays or reimburses benefits for per-  
11 mitted insurance as defined in section  
12 223(c)(1)(B)(i) or coverage described  
13 in section 223(c)(1)(B)(ii) (but not  
14 for long-term care services),

15 “(V) coverage that, after the  
16 qualified HSA distribution is made,  
17 pays or reimburses only those medical  
18 expenses incurred after an individual’s  
19 retirement (and no expenses incurred  
20 before retirement), or

21 “(VI) coverage that, after the  
22 qualified HSA distribution is made, is  
23 suspended, pursuant to an election  
24 made on or before the date the indi-  
25 vidual elects a qualified HSA distribu-

1                   tion or, if later, on the date of the in-  
 2                   dividual enrolls in a high deductible  
 3                   health plan (as defined in section  
 4                   223(c)(2)), that does not pay or reim-  
 5                   burse, at any time, any medical ex-  
 6                   pense incurred during the suspension  
 7                   period except as defined in subclauses  
 8                   (I) through (V) above.”.

9           (b) QUALIFIED HSA DISTRIBUTION SHALL NOT AF-  
 10   FECT FLEXIBLE SPENDING ARRANGEMENT.—Section  
 11   106(e)(1) is amended to read as follows:

12                   “(1) IN GENERAL.—A plan shall not fail to be  
 13                   treated as a health flexible spending arrangement  
 14                   under this section, section 105, or section 125, or as  
 15                   a health reimbursement arrangement under this sec-  
 16                   tion or section 105, merely because such plan pro-  
 17                   vides for a qualified HSA distribution.”.

18           (c) FSA BALANCES AT YEAR END SHALL NOT FOR-  
 19   FEIT.—Section 125(d)(2) is amended by adding at the end  
 20   the following new subparagraph:

21                   “(E) EXCEPTION FOR QUALIFIED HSA DIS-  
 22                   TRIBUTIONS.—Subparagraph (A) shall not  
 23                   apply to the extent that there is an amount re-  
 24                   maining in a health flexible spending account at  
 25                   the end of a plan year that an individual elects



to contribute to a health savings account pursuant to a qualified HSA distribution (as defined in section 106(e)(2)).”.

(d) SIMPLIFICATION OF LIMITATIONS ON FSA AND HRA ROLLOVERS.—Section 106(e)(2) (relating to qualified HSA distribution) is amended to read as follows:

“(2) QUALIFIED HSA DISTRIBUTION.—

“(A) IN GENERAL.—The term ‘qualified HSA distribution’ means a distribution from a health flexible spending arrangement or health reimbursement arrangement to the extent that such distribution does not exceed the lesser of—

“(i) the balance in such arrangement as of the date of such distribution, or

“(ii) the amount determined under subparagraph (B).

Such term shall not include more than 1 distribution with respect to any arrangement.

“(B) DOLLAR LIMITATIONS.—

“(i) DISTRIBUTIONS FROM A HEALTH FLEXIBLE SPENDING ARRANGEMENT.—A qualified HSA distribution from a health flexible spending arrangement shall not exceed the applicable amount.

1 “(ii) DISTRIBUTIONS FROM A HEALTH  
 2 REIMBURSEMENT ARRANGEMENT.—A  
 3 qualified HSA distribution from a health  
 4 reimbursement arrangement shall not ex-  
 5 ceed—

6 “(I) the applicable amount di-  
 7 vided by 12, multiplied by

8 “(II) the number of months dur-  
 9 ing which the individual is a partici-  
 10 pant in the health reimbursement ar-  
 11 rangement.

12 “(iii) APPLICABLE AMOUNT.—For  
 13 purposes of this subparagraph, the applica-  
 14 ble amount is—

15 “(I) \$2,250 in the case of an eli-  
 16 gible individual who has self-only cov-  
 17 erage under a high deductible health  
 18 plan at the time of such distribution,  
 19 and

20 “(II) \$4,500 in the case of an eli-  
 21 gible individual who has family cov-  
 22 erage under a high deductible health  
 23 plan at the time of such distribu-  
 24 tion.”.

1 (e) ELIMINATION OF ADDITIONAL TAX FOR FAILURE  
2 TO MAINTAIN HIGH DEDUCTIBLE HEALTH PLAN COV-  
3 ERAGE.—Section 106(e) is amended—

4 (1) by striking paragraph (3) and redesignating  
5 paragraphs (4) and (5) as paragraphs (3) and (4),  
6 respectively, and

7 (2) by striking subparagraph (A) of paragraph  
8 (3), as so redesignated, and redesignating subpara-  
9 graphs (B) and (C) of such paragraph as subpara-  
10 graphs (A) and (B) thereof, respectively.

11 (f) LIMITED PURPOSE FSAS AND HRAS.—Section  
12 106(e), as amended by this section, is amended by adding  
13 at the end the following new paragraph:

14 “(5) LIMITED PURPOSE FSAS AND HRAS.—A  
15 plan shall not fail to be a health flexible spending  
16 arrangement or health reimbursement arrangement  
17 under this section or section 105 merely because the  
18 plan converts coverage for individuals who enroll in  
19 a high deductible health plan described in section  
20 223(c)(2) to coverage described in section  
21 223(c)(1)(B)(iv). Coverage for such individuals may  
22 be converted as of the date of enrollment in the high  
23 deductible health plan, without regard to the period  
24 of coverage under the health flexible spending ar-  
25 rangement or health reimbursement arrangement,

1 and without requiring any change in coverage to in-  
 2 dividuals who do not enroll in a high deductible  
 3 health plan.”.

4 (g) DISTRIBUTION AMOUNTS ADJUSTED FOR COST-  
 5 OF-LIVING.—Section 106(e), as amended by this section,  
 6 is amended by adding at the end the following new para-  
 7 graph:

8 “(6) COST-OF-LIVING ADJUSTMENT.—

9 “(A) IN GENERAL.—In the case of any  
 10 taxable year beginning after December 31,  
 11 2008, each of the dollar amounts in paragraph  
 12 (2)(B)(iii) shall be increased by an amount  
 13 equal to such dollar amount, multiplied by the  
 14 cost-of-living adjustment determined under sec-  
 15 tion 1(f)(3) for the calendar year in which such  
 16 taxable year begins by substituting ‘calendar  
 17 year 2007’ for ‘calendar year 1992’ in subpara-  
 18 graph (B) thereof.

19 “(B) ROUNDING.—If any increase under  
 20 paragraph (1) is not a multiple of \$50, such in-  
 21 crease shall be rounded to the nearest multiple  
 22 of \$50.”.

23 (h) DISCLAIMER OF DISQUALIFYING COVERAGE.—  
 24 Section 223(c)(1)(B), as amended by this section, is  
 25 amended—

1 (1) by striking “and” at the end of clause (iii),  
 2 (2) by striking the period at the end of clause  
 3 (iv) and inserting “, and”, and  
 4 (3) by inserting after clause (iv) the following  
 5 new clause:

6 “(v) any coverage (including prospec-  
 7 tive coverage) under a health plan that is  
 8 not a high deductible health plan which is  
 9 disclaimed in writing, at the time of the  
 10 creation or organization of the health sav-  
 11 ings account, including by execution of a  
 12 trust described in subsection (d)(1)  
 13 through a governing instrument that in-  
 14 cludes such a disclaimer, or by acceptance  
 15 of an amendment to such a trust that in-  
 16 cludes such a disclaimer.”.

17 (i) EFFECTIVE DATE.—The amendments made by  
 18 this section shall apply to taxable years beginning after  
 19 the date of the enactment of this Act.

20 **SEC. 7. PURCHASE OF HEALTH INSURANCE FROM HSA AC-**  
 21 **COUNT.**

22 (a) IN GENERAL.—Paragraph (2) of section 223(d)  
 23 (defining qualified medical expenses) is amended to read  
 24 as follows:

25 “(2) QUALIFIED MEDICAL EXPENSES.—

1           “(A) IN GENERAL.—The term ‘qualified  
2           medical expenses’ means, with respect to an ac-  
3           count beneficiary, amounts paid by such bene-  
4           ficiary for medical care (as defined in section  
5           213(d)) for any individual covered by a high de-  
6           ductible health plan of the account beneficiary,  
7           but only to the extent such amounts are not  
8           compensated for by insurance or otherwise.

9           “(B) HEALTH INSURANCE MAY NOT BE  
10          PURCHASED FROM ACCOUNT.—Except as pro-  
11          vided in subparagraph (C), subparagraph (A)  
12          shall not apply to any payment for insurance.

13          “(C) EXCEPTIONS.—Subparagraph (B)  
14          shall not apply to any expense for coverage  
15          under—

16               “(i) a health plan during any period  
17               of continuation coverage required under  
18               any Federal law,

19               “(ii) a qualified long-term care insur-  
20               ance contract (as defined in section  
21               7702B(b)),

22               “(iii) a health plan during any period  
23               in which the individual is receiving unem-  
24               ployment compensation under any Federal  
25               or State law,

1 “(iv) a high deductible health plan, or  
 2 “(v) any health insurance under title  
 3 XVIII of the Social Security Act, other  
 4 than a Medicare supplemental policy (as  
 5 defined in section 1882 of such Act).”.

6 (b) EFFECTIVE DATE.—The amendment made by  
 7 this section shall apply with respect to insurance pur-  
 8 chased after the date of the enactment of this Act in tax-  
 9 able years beginning after such date.

10 **SEC. 8. SPECIAL RULE FOR CERTAIN MEDICAL EXPENSES**  
 11 **INCURRED BEFORE ESTABLISHMENT OF AC-**  
 12 **COUNT.**

13 Paragraph (2) of section 223(d), as amended by sec-  
 14 tion 7, is amended by adding at the end the following new  
 15 subparagraph:

16 “(D) CERTAIN MEDICAL EXPENSES IN-  
 17 CURRED BEFORE ESTABLISHMENT OF ACCOUNT  
 18 TREATED AS QUALIFIED.—An expense shall not  
 19 fail to be treated as a qualified medical expense  
 20 solely because such expense was incurred before  
 21 the establishment of the health savings account  
 22 if such expense was incurred—  
 23 “(i) during either—

1 “(I) the taxable year in which the  
 2 health savings account was estab-  
 3 lished, or

4 “(II) the preceding taxable year  
 5 in the case of a health savings ac-  
 6 count established after the taxable  
 7 year in which such expense was in-  
 8 curred but before the time prescribed  
 9 by law for filing the return for such  
 10 taxable year (not including extensions  
 11 thereof), and

12 “(ii) for medical care of an individual  
 13 during a period that such individual was  
 14 covered by a high deductible health plan  
 15 and met the requirements of subsection  
 16 (c)(1)(A)(ii) (after application of sub-  
 17 section (c)(1)(B)).”.

18 **SEC. 9. PREVENTIVE CARE PRESCRIPTION DRUG CLARI-**  
 19 **FICATION.**

20 (a) CLARIFY USE OF DRUGS IN PREVENTIVE  
 21 CARE.—Subparagraph (C) of section 223(c)(2) is amend-  
 22 ed by adding at the end the following: “Preventive care  
 23 shall include prescription and over-the-counter drugs and  
 24 medicines which have the primary purpose of preventing



1 the onset of, further deterioration from, or complications  
 2 associated with chronic conditions, illnesses, or diseases.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by  
 4 this section shall apply to taxable years beginning after  
 5 December 31, 2003.

6 **SEC. 10. CERTAIN EXERCISE EQUIPMENT AND PHYSICAL**  
 7 **FITNESS PROGRAMS TREATED AS MEDICAL**  
 8 **CARE.**

9 (a) **IN GENERAL.**—Subsection (d) of section 213 is  
 10 amended by adding at the end the following new para-  
 11 graph:

12 “(12) **EXERCISE EQUIPMENT AND PHYSICAL**  
 13 **FITNESS PROGRAMS.**—

14 “(A) **IN GENERAL.**—The term ‘medical  
 15 care’ shall include amounts paid—

16 “(i) to purchase or use equipment  
 17 used in a program (including a self-di-  
 18 rected program) of physical exercise,

19 “(ii) to participate, or receive instruc-  
 20 tion, in a program of physical exercise, and

21 “(iii) for membership dues in a fitness  
 22 club the primary purpose of which is to  
 23 provide access to equipment and facilities  
 24 for physical exercise.

1           “(B) LIMITATION.—Amounts treated as  
 2           medical care under subparagraph (A) shall not  
 3           exceed \$1,000 with respect to any individual for  
 4           any taxable year.”.

5           (b) EFFECTIVE DATE.—The amendment made by  
 6           this section shall apply to taxable years beginning after  
 7           the date of the enactment of this Act.

8   **SEC. 11. CERTAIN NUTRITIONAL AND DIETARY SUPPLE-**  
 9                           **MENTS TO BE TREATED AS MEDICAL CARE.**

10          (a) IN GENERAL.—Subsection (d) of section 213, as  
 11          amended by section 10, is amended by adding at the end  
 12          the following new paragraph:

13               “(13) NUTRITIONAL AND DIETARY SUPPLE-  
 14          MENTS.—

15               “(A) IN GENERAL.—The term ‘medical  
 16          care’ shall include amounts paid to purchase  
 17          herbs, vitamins, minerals, homeopathic rem-  
 18          edies, meal replacement products, and other di-  
 19          etary and nutritional supplements.

20               “(B) LIMITATION.—Amounts treated as  
 21          medical care under subparagraph (A) shall not  
 22          exceed \$1,000 with respect to any individual for  
 23          any taxable year.

1                   “(C) MEAL REPLACEMENT PRODUCT.—

2                   For purposes of this paragraph, the term ‘meal  
3                   replacement product’ means any product that—

4                   “(i) is permitted to bear labeling mak-  
5                   ing a claim described in section 403(r)(3)  
6                   of the Federal Food, Drug, and Cosmetic  
7                   Act, and

8                   “(ii) is permitted to claim under such  
9                   section that such product is low in fat and  
10                  is a good source of protein, fiber, and mul-  
11                  tiple essential vitamins and minerals.”.

12           (b) EFFECTIVE DATE.—The amendment made by  
13 this section shall apply to taxable years beginning after  
14 the date of the enactment of this Act.

15 **SEC. 12. CERTAIN PHYSICIAN FEES TO BE TREATED AS**  
16 **MEDICAL CARE.**

17           (a) IN GENERAL.—Subsection (d) of section 213, as  
18 amended by sections 10 and 11, is amended by adding  
19 at the end the following new paragraph:

20           “(14) PRE-PAID PHYSICIAN FEES.—The term  
21           ‘medical care’ shall include amounts paid by patients  
22           to their primary physician in advance for the right  
23           to receive medical services on an as-needed basis.”.

1       (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to taxable years beginning after  
3 the date of the enactment of this Act.

○